IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2433 OF 2006

Bhimaraya Mallappa Kapale .. Petitioner.

Versus

Siddappa Bhimraya Kapale & Ors. .. Respondents.

Mr.S.S.Patwardhan for the petitioner.

None for the respondent.

CORAM : R.C. CHAVAN, J.

DATE : 13TH APRIL, 2007.

P.C.:

. By this petition, the defendant in Reg.Civil Suit No.37 of 1999 before the learned Civil Judge, Junior Division, Mangalwedha takes exception to the order passed by the learned Judge allowing the amendment to the plaint to be carried out six years after the written statement was filed. The petitioner - defendant had raised defence in the written statement that plaintiff Nos.3 and 4 had relinquished their share by a document dated 7th July, 1988. By an application for amendment filed on 22nd September, 2005, the plaintiff sought declaration that the said document dated 7th July, 1988 is bogus, illegal and not binding on the plaintiff.

. Learned counsel for the petitioner states that this amendment would be unnecessary for deciding the controversy in the suit, and also assails the order passed on the ground that the learned Trial Judge should not have allowed this belated amendment.

. The first contention has to be rejected because prayer (d) in the plaint sought partition of the property whereby the plaintiff Nos.3 and 4 also wanted the 1/5th share in the property. The petitioner's defence in Para 9 of the written statement was that the plaintiff Nos.3 and 4 had relinquished their share. In order to adjudicate on the entitlement of the plaintiff to partition of property, it would be necessary for the plaintiff to seek amendment of the plaint assailing the document dated 7th July, 1988.

. The only grievance that the petitioner can legitimately raise is that the amendment to the plaint was sought six years after the written statement was filed. Though the learned trial Judge should have taken into consideration this aspect of the matter, if this belated amendment has caused any loss to the petitioner, that can be duly considered at the time of final disposal of the suit.

. In view of this, the petition does not make any ground for interference in exercise of jurisdiction under Article 227 of the Constitution of India. The petition is consequently dismissed.

(R.C. CHAVAN, J.)